

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, Local 3133,)	
)	
Petitioner,)	
v.)	Public Case No. R 96-019
)	
SNI VALLEY FIRE PROTECTION DISTRICT)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide all issues concerning the appropriateness of bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of International Association of Firefighters, Local 3133 (hereinafter referred to as the Union) to represent certain employees of Sni Valley Fire Protection District (hereinafter referred to as the Employer). The Union seeks to represent a bargaining unit of all firefighters and captains but excluding the chief, deputy chief, fire marshal and administrative assistant. A hearing on the matter was held on January 31, 1996 in Oak Grove, Missouri, at which representatives of the Union and the Employer were present. The case was heard by State Board of Mediation Chairman Francis Brady, employee member Joel Rosenblit and employer member Linda Cooper. At the hearing the parties were given full opportunity to present evidence. Afterwards, the parties filed briefs. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

The Sni Valley Fire Protection District, a 78 square mile fire district, was formed in 1974. When formed, it was a volunteer fire department. The first paid staff was hired in the 1980s. On January 1, 1994, Sni Valley merged with the Oak Grove EMS (Emergency Medical Service). Since the merger the District has provided both firefighting and emergency medical responses. This merger moved the department from primarily volunteers to having twelve paid staff, to wit: a fire chief, a deputy chief, a captain and nine firefighters. In January of 1995 the District reorganized internally and reclassified the existing captain into fire marshal and created two more captain positions (for a total of three captain positions). The additional captain positions were created so that someone was in charge after 5 p.m. on weekdays and on weekends and so the chief and deputy chief would not have to answer calls at night. This change brought the District to its current make up of a fire chief, a deputy fire chief, a fire marshal, three captains, and six firefighters. There is also an administrative assistant. In addition to the paid staff just noted, the District also utilizes between 10 and 20 volunteer firefighters. One of these volunteers has the title assistant fire chief and an unidentified number of volunteers have the title volunteer lieutenant and volunteer captain. All volunteers are used to supplement the paid staff; not to replace it.

District personnel responded to more service calls in 1995 than the previous year (specifically 1,168 in 1995 and 1,013 in 1994). Traffic in the area serviced by the district (particularly I-70) continues to increase as people travel to Lake Paradise (a nearby resort) and a new outlet mall. Additionally, according to population forecasts, the population in the area serviced by the District is expected to increase by about 6,000 by the year 2000. Because of the increased number of service calls, the increased traffic in the District and the expected population growth in the District, the fire chief recently

recommended to the Board that the District hire six additional firefighters. However, as of the date of the hearing the District Board had neither adopted nor implemented this recommendation for expansion of the staff. Consequently, no additional paid firefighter positions have been budgeted for next year.

The fire chief is the head of the department. Directly below the chief in the organizational chain of command are the deputy chief and the fire marshal. Underneath the deputy chief are the captains and below them are the firefighters. All firefighters, both paid and volunteer, report to the captains. The captains are the first level of authority over the firefighters. The captains, in turn, report to the deputy chief.

The department has two fire stations; one is located in Oak Grove and the other is in Bates City. The Oak Grove station is the larger of the two and is centrally located within the fire district. The department's administrative offices are located in the Oak Grove station. Consequently the chief, deputy chief and fire marshal work there. The individuals just noted work Monday through Friday, 8:00 a.m. to 5:00 p.m.. The three of them rotate being on-call after 5 p.m. among themselves. The one who is on-call is known as the duty officer. Being the duty officer is a function; not a position. The function of duty officer is to respond to any emergency scenes after 5 p.m. when more than three people are needed. Thus, the duty officer is the fourth individual from the department at a scene. On weekends, the duty officer is a volunteer officer. The captains and firefighters work 24 hour shifts. The three captains and six firefighters are each assigned to a crew. There are three crews with one captain and two firefighters on each crew. Each captain and one firefighter work at the Oak Grove station, and the other firefighter (on the crew) works by himself at the Bates City station.

The captain is the shift commander which means he is in charge of his crew of two firefighters and oversees them. He is responsible for what happens on his shift. The

captain oversees the firefighters both at their stations and in the field. The captain oversees the firefighter at the Bates City station by phone contact or driving over to visit the Bates City station. The captain directs the actions of both the firefighters and their work. The captain is the highest ranking officer at the Oak Grove station after 5 p.m. on weekdays and all day and night on weekends (i.e. 128 hours out of the 168 hours in a week). The captains are responsible for whatever happens during that time. If something out of the ordinary arises and needs to be done when they are in charge, the captain decides how to handle it. When a captain is on vacation, the deputy chief replaces them.

The tasks accomplished on each shift can be broken down into four main categories, to wit: station duties, extra duties, building checks and emergency response. Each of these categories will be addressed below in the order just listed.

Station duties are performed according to a schedule made up by the chief and deputy chief and posted at the stations. The daily duties include equipment maintenance and general cleaning. The captains perform these daily tasks along with the firefighters. The captains are responsible for making sure that the firefighters complete their regular station duties correctly. The record indicates though that firefighters require little direction in performing these routine tasks because they know what to do. If a different employee is on the shift because of sickness or vacation, the captain discusses who will do what with the replacement.

The three captains have also been assigned extra duties involving vehicle maintenance, training, and hazardous materials management/natural disaster preparedness. Each captain is accountable for one of these three areas (i.e. one for vehicle maintenance, one for training, and one for hazardous materials management/natural disaster preparedness.) The deputy chief decided which captain

would be responsible for which extra duty. The training captain's role involves reviewing and organizing materials for in-house training programs so that firefighters are trained and ready to respond to all emergencies. These training materials are used by the firefighters and other captains during the three hour block of each shift which is dedicated to training time. If a hazardous material incident or natural disaster occurs, the hazardous material captain would serve as advisor to the fire chief or incident commander. The vehicle maintenance captain, as the title implies, oversees the maintenance of the department's vehicles. It is his responsibility to ensure that the fire department's vehicles are properly maintained. The vehicle maintenance captain utilizes the firefighter on his shift, who is a mechanic, to get this maintenance work done. The captain assists the firefighter in doing this maintenance work because the firefighter has greater knowledge and expertise in mechanics than does the captain . The captains are given budgets with which to carry out these extra duties. The training captain's budget is \$13,000, the hazardous material captain's budget is \$4,000, and the vehicle maintenance captain's budget is \$7,000. When spending money from these budgets, captains must get authorization from the deputy chief to spend more than \$99.99. Expenditures below that limit may be made without authorization, but are still subject to review afterwards by the deputy chief. If the deputy chief disagrees with the manner in which money is spent, he will inform the captain of same. Normally, firefighters do not spend money from these budgets. The exception is the firefighter who assists the vehicle maintenance captain; that firefighter routinely spends money from the vehicle maintenance captain's budget.

The fire marshal sometimes assigns a shift to do building checks. When a shift is assigned to do such a check, the employees use a checklist provided by the District for

the inspection. Sometimes, a shift is given an additional assignment such as testing hoses. If this happens, the assignment is made by the deputy chief.

The most important task performed on each shift is emergency response. Each crew responds to the calls which come in on their shift. When an emergency call comes in, a minimum of four people from the department respond: the crew of two firefighters and a captain plus the on-call duty officer (i.e. either the chief, assistant chief or fire marshal). The captain is responsible for deploying the firefighters from the stations to the scene. When the crew responds to an emergency, the captain works alongside the firefighters in a team effort to address the emergency at hand. Most of the calls which the department responds to involve medical emergencies. Three of the six firefighters are EMTs and three are paramedics. In medical emergencies the level of training, not rank, determines who commands the call. In terms of EMS, a paramedic has more training than an EMT. A paramedic therefore assumes command at a medical emergency. A paramedic/firefighter can direct a captain with EMT training. As for fire calls, the captains command many of those incidents. The reason captains are usually incident commanders is as follows. As previously noted, the captains are stationed at the Oak Grove station which responds to the majority of calls. As a result, the captain often arrives first on the scene with one firefighter and before other personnel. The department's protocol is that whoever arrives on the scene first serves as the incident commander and is in charge of the scene. Put another way, this incident command system is based on who shows up first. A firefighter can be incident commander, but usually the captain acts as incident commander. The incident commander runs the scene and directs and coordinates the work force (both the paid firefighters and the volunteers) in their fire fighting, emergency or rescue efforts. At a fire scene all firefighting personnel (whether it be the chief, a captain or a firefighter) are expected to

follow standard operating procedures and take orders from the incident commander to do whatever is necessary to combat the fire. Similarly, medical protocols determine how EMS calls are handled. If the chief, deputy chief or fire marshal reports to the emergency scene, they do not take over control of the scene from the incident commander if they feel the incident commander is performing satisfactorily. However, even if they do not take over, they will correct any problems they perceive at the scene.

In addition to the tasks noted above, the captains are responsible for keeping a daily log which describes in general terms the activities which were completed on that day. The captains are also responsible for updating the call log which chronologically documents each run.. Sometimes, the firefighters do this paperwork. This paperwork takes about an hour or two per day to complete.

The captains meet with the chief, deputy chief and fire marshal once a month for a meeting. Additionally, the captain on duty meets with the chief, deputy chief and fire marshal on Monday, Wednesday, and Friday mornings to go over any information or questions anyone has for the day.

In December, 1995, the captains were told that henceforth when a position was vacant due to illness, they were to fill the position. Prior to this, captains did not perform this task; the deputy chief did. The record does not contain any examples where captains filled positions which were vacant due to illness.

Also in December, 1995, the captains were told that henceforth firefighters were to submit their vacation requests to the captains, who were then to submit them to the deputy chief for approval. Prior to this, firefighters submitted their vacation requests directly to the deputy chief for approval. The record does not contain any examples where firefighters submitted their vacation requests to a captain, or where a captain approved a vacation request.

None of the captains have ever hired, promoted or transferred anyone or laid anyone off. With regard to hiring, the record indicates that the district's Board makes hiring decisions after consulting with the chief. No captain has ever had any input into hiring decisions, including interviewing candidates. With regard to promotions, captains are not empowered to promote anyone. The only promotions documented in the record occurred in May, 1995 when three firefighters were promoted from within to captain. In that instance, the promotions did not automatically go to the firefighters with the most credentials or longest tenure in the District. Instead, all the firefighters interested in becoming captain were tested and ranked. Afterwards, the firefighters with the highest overall scores were promoted by the Board. With regard to transfers, the only example of same documented in the record involved two probationary employees who were switched from one shift to another. In that instance two captains suggested the switch to the deputy chief. It was the deputy chief though who approved the transfer. With regard to layoffs, the record does not contain any examples of same.

With regard to evaluations, the record indicates that captains evaluate the two firefighters on their crew. In doing so, the captains complete a preprinted evaluation form by ranking the firefighter's performance in a variety of areas using a scale which ranges from unsatisfactory to outstanding. After the captain fills out the evaluation form, they sit down with the firefighter and go over the evaluation with them. If a firefighter feels an evaluation has been unfair, they can appeal it to the deputy chief, and beyond, if they want. If an evaluation is appealed, the chief or deputy chief has the final say; not the captain. As of the date of the hearing, just one firefighter had been evaluated. These completed evaluations will not determine if the employee receives a pay increase.

With regard to discipline, captains are not empowered to discharge or suspend firefighters and have not done so. They have issued oral warnings though. When they did so they did not clear it in advance with the deputy chief or chief. The captains have been told they can issue written warnings. However, as of the date of the hearing none had done so. The chief or deputy chief determines whether any written documents relating to discipline are placed in an employee's personnel file. Thus, even if a captain were to give a firefighter a written warning, it would not automatically be placed in the employee's personnel file. Insofar as the record shows, since May, 1995, there has only been one disciplinary incident in the department. What happened there was as follows. In December, 1995, a volunteer lieutenant had a run in with two paid firefighters over his (the volunteer lieutenant's) authority. Afterwards, the volunteer lieutenant bypassed the traditional chain of command and complained directly to the chief about the conduct of the two paid firefighters. After hearing the complaint the chief suspended the two firefighters for two days each. After the suspensions were imposed, two captains protested the discipline. The chief then revoked the suspensions and instructed a captain to "deal with it.". The way the captain subsequently chose to "deal with it." was to have one of the paid firefighters involved in the incident teach a class to the volunteer firefighters. Insofar as the record shows, this matter was never written up. Thus, no written warning was ever issued to anyone as a result of the matter.

Under the department's pay plan, there are separate pay ranges containing steps for the various classifications. These steps are not based on length of service. The department's pay plan is not contained in the record. Firefighters are paid on an hourly basis while all others, including captains, are salaried. At least two paid firefighters in the department make more in base salary than a captain. On average though, captains are paid more than firefighters. The average base pay for firefighters is \$19,162, the

average base pay for firefighter/paramedics is \$23,652 and the average base pay for captains is \$27,125. Firefighters receive overtime pay and captains do not. Overtime is not included in the average base pay figures just noted. The record indicates that \$30,000 is budgeted for overtime for the firefighters for this year, so the six firefighters will each average about \$5,000 in overtime. Adding this amount (i.e. \$5,000) to the average firefighter annual income means that firefighter/paramedics earn about \$1,500 more than the captains, while the remaining firefighters still earn about \$3,000 less than the captains. Benefits for all District employees, from the paid firefighters to the chief, are the same.

CONCLUSIONS OF LAW

IAFF, Local 3133 petitioned to be certified as the exclusive bargaining representative for a unit of firefighters and captains at the Sni Valley Fire Protection District.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case there is no dispute per se concerning the appropriateness of a unit of firefighters. The only question raised by the Employer regarding the composition of the proposed bargaining unit concerns the inclusion of the captains within that unit. As a practical matter then, the employer's question concerning the appropriateness of including the captains in the bargaining unit is subsumed into the question of their possible supervisory status. That being so, our determination herein concerning whether the captains are supervisors will be dispositive of whether they are included in the bargaining unit. With this caveat, we hold that in the context of this case, a unit of firefighters in the Sni Valley Fire Protection District is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

As just noted, the parties agree that the sole issue here is whether the three captains should be included in that unit. The Employer contends they should be excluded from same because of their supervisory status while the Union disputes that assertion.

The Missouri Public Sector Labor Law gives certain employees the right to form and join labor organizations and to present proposals to their employers relative to conditions of employment. Although supervisors are not specifically excluded from the law's coverage, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo. App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Case No. 76-013 (SBM 1976). The rationale for the exclusion is that supervisors do not share a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise. This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since a dispute exists here as to whether the captains "supervise" the firefighters, it is necessary for us to determine if such is, in fact, the case.

This Board has traditionally used the following indicia to determine supervisory status:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;

- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.¹

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the question in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.²

Before applying those factors here, we have decided to make the following preliminary comments.

First, the Board does not consider burden of proof concepts to be an appropriate guide to resolving the issues presented by a non-adversarial election petition. The board's duty in election cases is to discharge its statutory obligation to determine the question of the appropriate bargaining unit for purposes of bargaining. The burden of proof, to the extent one can be said to exist, was on each party to bring forth the information it deemed appropriate to guide the Board in its determination. Second, our determination is based on the record evidence; not on what words and phrases are used in a job description. Were it otherwise, an employer could easily exclude an employee from a bargaining unit by simply using conclusory terms such as "supervisor" and "management" in the job description which it creates. In this case, the applicable job description uses the following phrases: "captain acts as a middle management administrator;" "provides...supervision;" "takes responsibility for subordinates;" "makes management decisions;" and "acting as a supervisor." Obviously, if one were to look no further than the captain's job description, one would have to conclude from the

¹ See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

² See, for example, Monroe County Nursing Home District, d/b/a Monroe Manor, Case No. R 91-016 (SBM 1991).

foregoing phrases that the position is supervisory. Suffice it to say that we will look much further than just the captain's job description. Third, we are well aware that employees whose status is in question have personal opinions concerning whether they want to be included or excluded from the bargaining unit. However, the wishes of those employees and their personal opinions concerning same are not controlling.

Having said that, attention is now turned to the above-noted factors. After applying them to the captains, we conclude they do not meet this supervisory test. Our analysis follows.

Attention is focused initially on factor (1). It is undisputed that the captains have no role whatsoever in hiring, firing, or granting raises. Those decisions are made by the Board of Directors after it receives input from the chief and deputy chief, but not from the captains. With regard to promotions, the only promotions documented in the record occurred when the new captain positions were created in 1995. The Board of Directors made the decision who to promote after receiving input concerning same from the chief and deputy chief. The only transfer that has occurred since the additional captain positions were created involved a switch of probationary employees from one shift to another. In that instance, two captains suggested the switch to the deputy chief. However it was the deputy chief, not the captains, who made the decision to switch the firefighters. In our view, this establishes that transfer decisions are made by the deputy chief; not the captains.

That said, the captains exercise some responsibilities in two of the areas listed or inferred in factor (1), namely discipline and evaluations. An analysis of their role in those areas follows.

With respect to discipline, captains have issued verbal warning to firefighters. When they did so, they did not clear it in advance with anyone up the chain of command. The captains have been told they can issue written warnings but to date none have done so.

Captains cannot suspend or discharge employees on their own volition, nor have they ever recommended this action. The foregoing convinces us that captains play an extremely small role in disciplining firefighters. If a disciplinary decision of any consequence needed to be made, it would not be made by the captains, but further up the chain of command.

With respect to evaluations, the record indicates that captains are going to evaluate the two firefighters on their shift. To date though, just one firefighter has been evaluated. A firefighter who is dissatisfied with an evaluation can appeal it up the chain of command. If they do, the captain would not have the final say on the matter. It is unclear from the record what role these evaluations play. It is clear though that these evaluations will not determine if the employee receives a pay increase. It is also clear that the captains do not determine pay increases for firefighters or award them any money; as previously noted, those decisions are made by the Board of Directors.

The focus now turns to factor (2), the authority to direct and assign the workforce. There is no question that the captains are in charge of the two firefighters on their crew and direct and oversee them on a daily basis. During emergency medical service, however, a paramedic/firefighter can direct a captain/EMT. Moreover, the vehicle maintenance captain assists the firefighter who performs maintenance on the fire trucks. Generally, the firefighters know their job assignments and perform them without direction. As a result, the firefighters do not wait for the captains to assign them duties, meet with them, or make decisions about what tasks need to be done. The captains ensure that duties are performed correctly. This persuades us that while the captains are certainly called upon to exercise their discretion and make decisions, they have a limited role in directing and assigning firefighters.

Next, with regard to factor (3), the record indicates that the employer's total paid staff consists of a chief, a deputy chief, a fire marshal, an administrative assistant, three

captains and six firefighters. The parties agree that the chief, deputy chief and fire marshal are supervisors and therefore excluded from the proposed bargaining unit. Additionally, the administrative assistant is not part of the proposed bargaining unit. Given the foregoing, the outcome herein will determine whether there are three supervisors (the chief, deputy chief and fire marshal) and nine bargaining unit employees (three captains and six firefighters) or six supervisors (the three just referenced plus the three captains) and six bargaining unit employees (i.e. the firefighters). In other words, the outcome here will determine whether the supervisor/employee ratio is one to three or one to one. When put this way, it is apparent that if the captains are excluded from the bargaining unit, there would be an overall ratio of one supervisor for every firefighter in the department. In our view, such a ratio is absolutely unheard of and does not pass muster.

Anticipating this, the Employer contends that it expects increased traffic and population growth in the fire district to result in a corresponding increase in the number of paid firefighters in the future. To support this contention, it notes that the chief has recommended to the District Board that six additional firefighters be hired. However, that recommendation has not yet come to pass. As of the date of the hearing, the Board had neither adopted nor implemented that recommendation for staff expansion and no additional paid firefighter positions had been budgeted for the next year. That being so, we find it appropriate to base our decision herein on the facts that existed as of the date of the hearing; not on what they might be in the future. If the predicted population increase comes to pass, and the District Board hires enough additional firefighters to dramatically alter the supervisor/employee ratio just noted, the Employer can petition this Board for a unit clarification at that time.

With respect to the level of pay (factor 4), it is noted at the outset that at least two firefighters make more in base salary than a captain. On average though, captains are

paid more than firefighters. However, captains do not receive overtime while firefighters do. When overtime pay (which presently amounts to about \$5,000 per firefighter) is added to their base pay, the firefighter/paramedics make more than captains.

Finally, with regard to the last two factors, it is again noted that the captains are in charge of the two firefighters on their crew both at the stations and in the field. Additionally, the captains are in charge of the Oak Grove station after 5 p.m. on weekdays and all of the weekends. That said though, the captains spend much of their time doing the same work as the firefighters (i.e. doing station duties, training, doing building checks and making emergency responses) and performing this work directly along side them. That being so, we are persuaded that while each captain oversees and directs two firefighters on a daily basis, they are essentially crew leaders or crew chiefs.

To summarize then, the record indicates that the three captains are skilled employees who perform, incidentally to their work, a number of supervisory functions. Specifically, they are in charge of their crew of two firefighters, are in charge of the Oak Grove station after 5 p.m. on weekdays and all of weekends, monitor the work performed by firefighters both at their stations and in the field to ensure proper performance, issue verbal warnings without prior approval, and will conduct performance evaluations on their two firefighters. However, the factors just listed are not enough to qualify them as supervisors. Overall, they do not exercise sufficient supervisory authority in such combination and degree to make them supervisors. We therefore conclude that in this specific case, the captains are not supervisors.

ORDER

It is the decision of the State Board of Mediation that the three captains at issue here are not supervisory employees. They are therefore included in the bargaining unit with the firefighters. The description of the bargaining unit found appropriate is as follows:

All paid firefighters and captains of the Sni Valley Fire Protection District excluding the chief, deputy chief, fire marshal and administrative assistant.
An election is ordered therein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have IAFF Local 3133 as their exclusive bargaining representative.

The Employer shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 13th day of May, 1996.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Francis R. Brady
Francis R. Brady, Chairman

/s/ Joel Rosenblit
Joel Rosenblit, Employee Member

/s/ Linda Cooper
Linda Cooper, Employer Member